

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 12626 OF 2006

DATED: 26-06-2006

BETWEEN:

City Restaurant, Stores and Bakery,

Petitioner

And

The Commissioner, Municipal Corporation of Hydeabad and
others

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.12626 of 2006

ORDER:

1. Heard Sri Mohd. Basith Ali Yavar, the learned counsel representing the petitioner and Sri Ganta Rama Rao, learned standing counsel for Municipal Corporation of Hyderabad.

2. The writ petition is filed praying for a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proposed action of the respondents 1 and 2 to demolish the mulgies 5 to 9 under the occupation of City Restaurant forming part of the property bearing Municipal No. 21-5-16, situated at Petlaburj, Hyderabad in collusion with respondent No.3 without notice to the petitioner under road widening programme and without following due process of law as highly illegal, arbitrary and contrary to Sections 146 and 147 of the Hyderabad Municipal Corporation Act, 1955, (hereinafter in short referred to as 'the Act') and pass such other suitable orders.

3. Sri Ganta Rama Rao had taken notice representing the Municipal Corporation of Hyderabad on 23-06-2006 and requested time to get instructions in the matter. This court while directing the office to list the matter on 26-6-2006 also made a further direction "In the meanwhile, the respondents not to proceed with the demolition activity relating to the subject matter of

the writ petition if not already demolished". The counsel representing the Municipal Corporation of Hyderabad would submit that even if the petitioner is the tenant, the procedure may have to be followed. Sri Mohd. Basith Ali Yavar placed strong reliance in **Ushodaya Publications, Hyderabad Vs. Commissioner, Municipal Corporation of Hyderabad and another** ^[1]. In view of the factual situation, the third respondent need not be heard at this stage, especially in the light of the fact that the petitioner is aggrieved by the action of the respondents 1 and 2 in not following the due process of law while operating the road widening programme. It is stated in the affidavit filed in support of the writ petition that the petitioner is the partner and is well conversant with the facts of the case. It is also stated that respondents 1 and 2 are proposing to demolish mulgies 5 to 9 under occupation of City Restaurant forming part of the property bearing Municipal No.21-5-16 at Petlaburj, Hyderabad, in collusion with respondent No.3 without following due process of law under road widening programme. This court need not express any opinion relating to the said allegation.

4. Be that as it may, the Division Bench of this Court in **Ushodaya Publications, Hyderabad Vs. Commissioner, Municipal Corporation of Hyderabad**,(1 supra) at Para 10 observed as hereunder:

"The 1st respondent is a statutory authority. Its right to take possession of the land, therefore, must be exercised within the four corners of the statute. It is one thing to say that the provisions laid down under the said Act for acquiring the land are not required to be taken recourse to as the owner thereof has granted consent but the same would not mean that the lessee's consent need not be taken. There cannot be any doubt whatsoever that the said consent granted by the owner would not be binding upon the lessee and in that view of the

matter the 1st respondent had no right to take forcible possession of the land in question, relying on the purported consent obtained by it from the petitioner' lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner shall be deprived of its own valuable right. The 1st respondent in our considered opinion deprived the petitioner of the said right without taking recourse to law. K.Ramasway, J., in his order dated 14.9.1987 in writ petition No.6294 of 1983 held:

“ Under the provisions of the Land Acquisition Act read with the Hyderabad Municipal Corporation Act, the Corporation has been given power to acquire the land for public purpose by issue of notice under Section 4(1) of the Land Acquisition Act, unless the parties give consent to the acquisition. In this case, in view of the above facts, it must be construed that the petitioner has not consented to part with possession of their land voluntarily.”

5. Section 2 (28) of the Act defines 'land' as hereunder:

“ “land” includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street.”

6. Section 2 (39) of the aforesaid Act defines 'owner' as hereunder:

“ (a) When used with reference to any premises, the person who receives, the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let and includes-

(i) An agent or trustee who receives such rent on account of the owner,

(ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any premises devoted to religious or charitable or educational purposes:

(iii) a receiver, sequestrator or manager appointed by any Court of competent jurisdiction to have the charge of or to exercise the rights of an owner of the said premises; and

(v) a mortgage-in-possession; and

(a) when used with reference to any animal, vehicle or boat includes the person for the time being in charge of the animal, vehicle or boat;

7. Sections 146 and 147 of the aforesaid Act read as hereunder:

Section 146. Acquisition of immovable property by agreement:- Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms at such rates or prices not exceeding such maximum as shall be approved by the Standing Committee, either generally for any class of cases or specially in a particular case.

(2) And whenever, under any provisions of this Act, the Commissioner is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms and at rates or prices not exceeding such maximum as shall be approved by the Standing committee as aforesaid.

(3) Subject to the provisions of this Act, it shall be lawful for the Commissioner on behalf of Corporation to agree with the owner of any land or of any interest in loan needed by the Corporation for the purposes of any Scheme under Chapter XII or with the owner of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or of any interest in such land or for compensating the owner of any such right in respect of any deprivation thereof or interference therewith.

(4) No contract for the acquisition of any immovable property or of any interest therein or any right thereto or the payment of any compensation under sub-sections (1), (2) or (3) shall be valid, if the price of compensation to be paid for such property or interest or right exceeds rupees five thousand unless and until such contract has been approved by the Corporation.

(5) Every contract or other instrument relating to the acquisition of immovable property or any interest therein or any right thereto shall be executed by Commissioner, shall have the common seal of the Corporation affixed thereto in the presence of two officers nominated by the Commissioner and shall also have the signature of the said two members, in the manner provided in Section 125.

(6) No contract for the acquisition of immovable property or any interest

therein or any right thereto not executed as provided in sub-section (4) shall be binding on the Corporation.

- (7) *The forgoing provisions of this section which apply to an original contract relating to the acquisition of immovable property, or any interest therein, or any right thereto, shall be deemed to apply also to any variation or discharge of such contract.*

Section 147. Procedure when immovable property cannot be acquired by agreement L1) *Whenever the Commissioner is unable to acquire any immovable property under the last preceding Section by agreement, the Government may, in their discretion, upon the application of the Government may in their discretion, upon the application of the Commissioner, made with the approval of the Standing Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation in accordance with the provisions of the Land Acquisition Act, 1984 as amended for a public purpose within the meaning of the provisions of the said Act.*

- (2) *The amount of compensation awarded and all other charges incurred in acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.”*

8. In the light of the provisions referred to supra and also in the light of the decision specified above, it is needless to say that the Municipal Corporation of Hyderabad is bound to follow due process of law before proceeding with the demolition activity.

9. In view of the same, the writ petition is disposed of directing the respondents 1 and 2 not to take up any demolition activity relating to the mulgies 5 to 9 under the occupation of City Restaurant forming part of the property bearing Municipal No.21-5-16 at Petlaburj, Hyderabad unless and until they follow the due process specified under the provisions of the Act aforesaid.

10. The writ petition is disposed of. No order as to costs.

P.S.NARAYANA,J

26-06-2006

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[\[1\]](#) 2001 (3) ALD 173 (DB)